

1 Q Let me back up here. What I take this to mean is that
2 if the supervisor works, let's say, supposed to work 12
3 hours and you get a certain amount of money for 12
4 hours. If he works 13 hours he should get 1 hour of
5 straight time, do you take it to mean that or do you
6 take it mean something different?

7 A If we classify them in this supervisory classification.

8 Q Okay. So, it would mean that he worked hours, he'd get
9 one hour of straight time, but no premium pay for
10 overtime?

11 A You could classi- -- right, that's -- I think that's
12 what his determination letter says, right?

13 Q So, then, my question to you is: Did APC ever pay
14 anybody from that classification in that manner? In
15 other words, if a guy worked 13, did he get his extra
16 hour of straight time?

17 A Beyond our 12-hour day, you mean?

18 Q Right.

19 A I don't recall.

20 Q Okay. And, again, it may sound redundant, follow-up
21 question: Are there any records that you're aware of
22 that would demonstrate that that did happen?

23 A That I don't recall.

24 Q Okay. Did you or APC ever address any employees in
25 that classification and tell them that they were

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1 entitled to get straight time pay for every hour
2 worked? In other words for that 13th or subsequent
3 hour?

4 A I don't recall. I know it was one of our
5 classifications and it was out there. Do I -- I don't
6 remember a specific conversation with the supervisor.
7 That would have probably been a tier below me.

8 Q Okay.

9 A At the time.

10 Q All right. Well, for instance, when his letter came
11 out it might be, but I don't know this because I wasn't
12 there, that somebody goes to the individuals in his job
3 and says we need to pay you for every hour worked. So,
14 subsequent to today or prior to today, whatever, we'll
15 pay you for your time over 12 hours at the straight
16 time rate?

17 A It could have easily happened, if this was an issue for
18 me at the time, I communicated well to my direct
19 reports. I think all of my direct reports at the time
20 were classified as exempt which I was comfortable with.
21 They, in turn, could have gone through their next tier
22 where they would have had supervisors under them and
23 could have communicated this, yes.

24 Q Okay. But.....

25 A I am not aware of it.

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1 Q All right. So you're not aware that anybody paid
2 anybody any money for all hours worked pursuant to this
3 information coming to your attention?

4 A I think it's happened, but I don't recall, like you
5 said, was it Jonny Jones, I don't remember.

6 Q Well let's speak more generally, than Jonny Jones. To
7 the extent that you think it's happened, you know, who,
8 what, when, where, why, how? What are the
9 circumstances of it?

10 A And then I don't recall. I really don't.

11 Q All right. And again, it may sound redundant, are you
12 aware of any records to that effect?

13 A No.

14 Q All right.

15 MR. COVELL: Let's go off record madame clerk.

16 (Off record)

17 (On record)

18 Q (By Mr. Covell) As far as you know Mr. Nelson, did
19 anybody talk to John Gilbert about what he did on a day
20 to day basis as safety supervisor?

21 A I don't know. I wasn't -- he was after my time.

22 Q Okay. But he was there, I represent to you he was
23 there '01, '03, so you would have been way up at the
24 top at the food chain and he would have been somewhere
25 close to the bottom, right?

JOHN GILBERT vs. APC NATCHIQ, INC.
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JUNE 15, 2006

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

JOHN GILBERT,

Plaintiff,

vs.

APC NATCHIQ, INC.,

Defendant.

Case No. 3:03-CV-00174-RRB

DEPOSITION OF MARK C. NELSON
June 15, 2006

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MR. DOUGLAS SMITH

* * * *

EXHIBIT 2
Page 1 of 5

1 Sure.

2 Q I want confirmation that Mr. Boyle's memo to you is
3 recommending that all occupations where there may be
4 questions concerning they are properly classified, be
5 reviewed. That's the direction there, right or wrong?

6 A Yes.

7 Q All right. And then subsequent to that starting with
8 201 through the end of it, appear to be documents -- or
9 is it fair to say that they're documents pertain to
10 your communications with Mr. Carr generally concerning
11 the material supervisor job?

12 A Correct.

13 Q Okay. And again, you haven't had a chance to read --
14 well you read this WHOL letter prior to the deposition,
15 right?

16 A Correct.

17 Q And in there, in that WHOL letter, there's a discussion
18 about paying supervisors whether exempt or not for
19 every hour worked. And if you want to take time and
20 review this that's.....

21 A I think that's -- yes, I think that's correct.

22 Q Okay. Did APC ever pay any supervisory person monies
23 pursuant to this determination that they're eligible
24 for pay for all hours worked?

25 A Did we ever pay any supervisor --